

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

MARSH & MCLENNAN AGENCY LLC,

Plaintiff,

-against-

ELMER “RICK” FERGUSON,

Defendant.

No. 19-cv-03837 (VSB)

**DECLARATION OF NICHOLAS H. SIKON IN SUPPORT OF UNOPPOSED MOTION
FOR LEAVE TO WITHDRAW AS COUNSEL FOR DEFENDANT**

I, Nicholas H. Sikon, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury that the following is true and correct:

1. I am a Partner in the law firm of Outten & Golden LLP (“O&G”) and an attorney in good standing admitted to practice in the State of New York.

2. O&G is counsel of record for Defendant Elmer “Rick” Ferguson (“Defendant” or “Mr. Ferguson”).

3. I make this declaration in support of O&G’s Unopposed Motion for Leave to Withdraw as Counsel for Defendant.

4. I have personal knowledge of the matters set forth herein and would so testify if called as a witness at trial.

5. Local Rule 1.4 provides,

An attorney who has appeared as attorney of record for a party may be relieved or displaced only by order of the Court and may not withdraw from a case without leave of the Court granted by order. Such an order may be granted only upon a showing by affidavit or otherwise of satisfactory reasons for withdrawal or displacement and the posture of the case, including its position, if any, on the calendar, and whether or not the attorney is asserting a retaining or

charging lien. All applications to withdraw must be served upon the client and (unless excused by the Court) upon all other parties.

6. Through this declaration, O&G meets the requirements of Local Rule 1.4.

7. In August 2019, I explained to Mr. Ferguson the risks to him of O&G withdrawing as his counsel and of him proceeding *pro se*.

8. Mr. Ferguson knowingly and freely assented to O&G's withdrawal and consents to this motion.

9. Pursuant to Rule 1.16 (c) (10) of the New York Rules of Professional Conduct, "...a lawyer may withdraw from representing a client when ... the client knowingly and freely assents to termination of the employment."

10. Professional considerations require and permit termination of O&G's representation of Mr. Ferguson and O&G's withdrawal from representing him in this matter.

11. According to Official Comment 3 to Rule 1.16 of the New York Rules of Professional Conduct, a "lawyer's statement that professional considerations require termination of the representation ordinarily should be accepted as sufficient."

12. If the Court requires further detail, we respectfully request leave to provide such explanation *in camera* to prevent prejudice to Mr. Ferguson. *See also* Local Rule 1.4 Committee Note ("This is not meant to preclude the Court from permitting the reasons for withdrawal to be stated in camera and under seal in an appropriate case"); ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. 476 (2016) ("[W]hen in doubt, a lawyer should err on the side of non-disclosure.").

13. Granting this motion will not affect the case schedule or materially prejudice the parties or the Court. Mr. Ferguson does not seek a stay of the matter. All pending motions – *i.e.* Defendant's Motion to Dismiss (ECF No. 23) and Plaintiff's Motion for Preliminary Injunction

(ECF No. 34) – are fully briefed. Mr. Ferguson intends to attend and participate in the preliminary injunction hearing scheduled to commence on October 2, 2019 (*see* ECF No. 60).

14. Mr. Ferguson has strong knowledge of the legal theories and facts of his case and is well-equipped to find replacement counsel or proceed *pro se*.

15. Mr. Ferguson's contact information is:

Elmer "Rick" Ferguson
753 Mills Ave
San Bruno, CA 94066
Tel.: (619) 980-2074

16. O&G will not assert a retaining or charging lien.

17. For the foregoing reasons, we respectfully request that the Court grant the Unopposed Motion for Leave to Withdraw as Counsel, and enter an Order striking and withdrawing the appearance of the undersigned counsel and O&G in this matter.

18. A copy of this motion is being served on Mr. Ferguson concurrently with service on Plaintiff.

Dated: August 30, 2019
New York, New York

Respectfully submitted,

/s/ Nicholas H. Sikon
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